

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judge:

E. Roy Hawken
Presiding Officer

In the Matter of

AEROTEST OPERATIONS, INC.

(Aerotest Radiography and Research Reactor)

Docket No. 50-228-LT

ASLBP No. 14-931-01-LT-BD01

May 13, 2014

MEMORANDUM AND ORDER
(Initial Scheduling Order and Administrative Directives)

I. Background

This proceeding involves a challenge by Aerotest Operations, Inc. and Nuclear Labyrinth, LLC [hereinafter the Companies] to the NRC Staff's July 24, 2013 denial of a license transfer request.¹ Although the Commission ordinarily serves as the Presiding Officer in license transfer proceedings (10 C.F.R. § 2.1319(a)), in this case the Commission directed that "a single administrative judge . . . serve as the Presiding Officer for purposes of compiling the hearing record, ruling on any motions related to developing the factual record . . ., presiding at any oral hearing, and certifying the compiled record [to the Commission]."²

¹ See Aerotest Operations, Inc.—Denial of License Renewal, Denial of License Transfer, and Issuance or Order to Modify License No. R-98 to Prohibit Operation of the Aerotest Radiography and Research Reactor, Facility Operating License No. R-98 (TAC NOS. ME8811 and MC9596) (July 24, 2013).

² See Aerotest Operations, Inc. (Aerotest Radiography and Research Reactor), CLI-14-05 at 13 (2014).

II. Schedule in this Subpart M Proceeding³

This Board held a prehearing teleconference on April 24, 2014, where the parties agreed that the evidentiary hearing in this Subpart M proceeding will be oral (see 10 C.F.R. § 2.1308) and will be held in the ASLBP Hearing Room in Rockville, Maryland. They also agreed to submit a joint proposed schedule for this Board's consideration.

The parties thereafter submitted a joint proposed schedule, requesting that the evidentiary hearing be held during the week of August 11, 2014, preferably August 12-13.⁴ Based on its understanding that the proposed hearing date represents the earliest availability of counsel and witnesses,⁵ this Board finds the proposed pre-hearing and hearing schedule to be reasonable. This Board therefore adopts that schedule, which is appended to this order, to govern this case. See Appendix A.

As stated during the teleconference (Tr. at 13), absent compelling reasons, this Board will be reluctant to grant requested changes to the schedule that would delay the evidentiary hearing.

III. Procedural Matters

a. Disclosures. The obligations of the parties concerning disclosures under 10 C.F.R. § 2.336 are altered to conform to their agreements. Specifically, the requirement of a privilege log has been waived. See Joint Proposed Schedule at 1. Additionally, the Companies will not be required to make initial disclosures, and the NRC Staff will not be required to update the hearing file. See Addendum to Joint Proposed Schedule at 1. If new and significant

³ As prescribed in 10 C.F.R. § 2.1300, adjudicatory proceedings in license transfer cases are conducted pursuant to Subpart M of 10 C.F.R. Part 2.

⁴ See Letter to Judge Hawken Regarding Addendum to Joint Proposed Schedule (May 7, 2014); Letter to Judge Hawken Regarding Joint Proposed Schedule (May 5, 2014).

⁵ See Official Transcript of Prehearing Teleconference, Aerotest Operations, Inc., at 13-14 (Apr. 24, 2014) [hereinafter cited as Tr.].

information related to matters in litigation becomes known to any party, however, that information shall be timely disclosed. See id.

b. Exhibits and Pre-filed Testimony. Prehearing evidentiary submissions shall contain an initial written statement of position, written testimony, and exhibits. The initial written statement shall be in the nature of a trial brief that summarizes the party's case, setting out applicable legal standards, identifying witnesses and evidence, and specifying with as much particularity as practicable how each witness, exhibit, or category of evidence supports a factual or legal position.

To promote efficiency, the Board intends to admit all admissible pre-filed testimony and exhibits into the evidentiary record at the outset of the hearing. To facilitate that process, the parties are encouraged to resolve all evidentiary disagreements prior to the hearing.

i. Individual Files. Per 10 C.F.R. § 2.304(g), each item of pre-filed testimony and each exhibit must be submitted through the agency's electronic filing system. All pre-filed testimony and exhibits will be received into evidence in exhibit form pursuant to 10 C.F.R. § 2.1207(b)(2). Written testimony – whether direct or reply – shall be submitted under oath in the form of an affidavit or sworn declaration suitable for being received directly into evidence pursuant to 10 C.F.R. § 2.1207(b)(2). The exhibits shall include all documents (or relevant portions of documents) that the party or its witnesses reference, rely on, or otherwise use.

ii. Exhibit Numbering and Sequencing. Each party shall number its pre-filed testimony and exhibits in a format that consists of a three-character party designation, followed by a three-character zero-filled number. The three-character designations to be used by the parties are "NRC" for the NRC Staff and "AOI" for the Companies. Each party shall endeavor to order pre-filed testimony and exhibits in a manner that is logically consistent with that party's development of its case.

iii. Exhibit Number Location. The exhibit number should be placed in the upper right hand corner of the first page of the pre-filed testimony or exhibit. A party should only use a

separate cover sheet if there is no space on the page of the document where the exhibit number can be placed so that it is clear and legible. All pages in the exhibit should be numbered consecutively so that they can be referred to easily and quickly at hearing.

iv. Large File Size Exhibits. If pre-filed testimony or an exhibit needs to be separated into multiple segments to ensure that it does not exceed the agency's guidance of recommended file sizes, each segment should be labeled by placing a letter in the last character place of the number. The letter designation should reflect the relationship of each part of the pre-filed testimony or exhibit to the other parts (e.g., NRC-001A, NRC-001B, etc.).

v. Revised Exhibits. If any party submits a revised exhibit, there should be a letter "R" added to the end of the previous exhibit number (e.g., NRC-001R).

vi. Duplicate Exhibits. Only one copy of each document should be offered into evidence in this proceeding. Therefore, if the NRC Staff offers into evidence a certain document, the Companies should not offer into evidence the same document; they should instead rely on the document already filed by the NRC Staff. Accordingly, the parties should work with each other to determine whether any of the exhibits a party intends to offer into evidence would be duplicated by the other party. If duplication will occur, the parties should coordinate to determine who will offer the exhibit into evidence. The party intending to use the material as an exhibit should revise its evidentiary submissions to reference the exhibit number provided by the other party.

vii. Exhibit List. At the time that new or revised pre-filed testimony or exhibits are filed, each party should submit its revised pre-filed exhibit list via NRC's e-filing system. In addition, each party should submit, via e-mail, an electronic copy (preferably in Microsoft Word format) to the Board's law clerk, Kathleen Schroeder (Kathleen.Schroeder@nrc.gov).

c. Proposed Questions. Pursuant to 10 C.F.R. § 2.1323(e), participants and witnesses will be questioned orally or in writing and only by the Presiding Officer. Questions may be addressed to individuals or to panels of participants or witnesses. Any proposed

questions submitted by counsel for the parties should contain a brief description of the issue or issues that the party contends need further examination, the objective of the examination, and the proposed line of questioning (including specific questions) that may logically lead to achieving the objective. Proposed examination questions and plans should be filed in camera, using the NRC's e-filing system, and not served on the other party.

d. Stipulations. The parties are encouraged to discuss among themselves and submit to the Board stipulations of any relevant fact or the contents or authenticity of any document. The Board expects to review the status of such stipulations during a subsequent prehearing conference. See 10 C.F.R. § 2.329(c)(3).

e. Availability of Witnesses. Unless the Presiding Officer orders otherwise, each party must, at its own expense and effort, assure that each person for whom it has submitted written testimony attends the entire evidentiary hearing in person and is available to testify and to respond orally to questions.

f. Settlement. The Commission encourages the fair and reasonable settlement and resolution of issues proposed for litigation. Parties are encouraged to employ alternative dispute resolution to address the issues without the need for litigation. See 10 C.F.R. § 2.338.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

E. Roy Hawken
PRESIDING OFFICER

Rockville, Maryland
May 13, 2014

APPENDIX A

GENERAL SCHEDULE – Aerotest Operations, Inc.

(Aerotest Radiography and Research Reactor)

Event	Date
NRC Staff Response to Applicants' Statement of Areas of Controversy	May 9, 2014*
Initial Disclosures/Hearing File	May 9, 2014
Presiding Officer Order on Admissibility of Areas of Controversy	May 30, 2014
Initial Statements of Position, Direct Written Testimony, Supporting Affidavits	June 13, 2014
Written Response, Rebuttal Testimony, Proposed Questions for the Presiding Officer to Consider	July 18, 2014
Proposed Questions Directed to Rebuttal Testimony	July 25, 2014
Written Concluding Statements of Position on the Issues	July 31, 2014
Oral Hearing	August 12, 2014
Written Post-Hearing Statements of Position on the Issues	Within 20 Days of the Close of the Hearing
Presiding Officer Must Certify Hearing Record to the Commission	Within 25 Days of Close of the Hearing

* This NRC Staff filing is in response to "Aerotest Operations, Inc. And Nuclear Labyrinth, LLC's Statement of Areas of Controversy Regarding Denial of Indirect License Transfer of Aerotest Radiography and Research Reactor," which the Companies submitted on April 22, 2104 pursuant to the Commission's order in CLI-14-05 (p. 15).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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AEROTEST OPERATIONS, INC.)	Docket No. 50-228-LT
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(Aerotest Radiography Research Reactor))	
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Initial Scheduling Order and Administrative Directives)** have been served upon the following persons by Electronic Information Exchange.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
E-mail: hearingdocket@nrc.gov

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop T-3F23
Washington, DC 20555-0001

E. Roy Hawkens
E-mail: Roy.Hawkens@nrc.gov

Kathleen Schroeder, Law Clerk
E-mail: Kathleen.Schroeder@nrc.gov

Pillsbury Winthrop Shaw Pittman LLP
2300 N Street NW
Washington, DC 20037-1122
Kimberly Harshaw, Esq.
Jay Silberg, Esq.
Maria Webb
E-mail: Kimberly.Harshaw@pillsburylaw.com
Jay.Silberg@pillsburylaw.com
Maria.Webb@pillsburylaw.com

Aerotest Operations, Inc., Docket No. 50-228-LT

MEMORANDUM AND ORDER (Initial Scheduling Order and Administrative Directives)

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
Anita Ghosh, Esq.
Christina England, Esq.
Catherine Kanatas, Esq.
Susan Uttal, Esq.
Edward Williamson, Esq.
Jeremy Wachutka, Esq.
Sabrina Allen, Paralegal
John Tibbetts, Paralegal
E-mail:

Anita.Ghosh@nrc.gov;
Christina.England@nrc.gov;
Catherine.Kanatas@nrc.gov;
Susan.Uttal@nrc.gov;
Edward.Williamson@nrc.gov;
Jeremy.Wachutka@nrc.gov
John.Tibbetts@nrc.gov

OGC Mail Center : OGCMailCenter@nrc.gov

[Original signed by Brian Newell]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 13th day of May, 2014